Supreme Court, U.S.
FILED

112

No. 08-685

MAY 12 2008

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In The Supreme Court of the United States

SUSAN BABA *Petitioner,*

v.

MARTIN EVANS, NEW YORK STATE ("NYS") ATTORNEY GENERAL'S OFFICE, NYS INSURANCE DEPARTMENT, NYS DIVISION OF HOUSING AND COMMUNITY RENEWAL, ("DHCR"), DHCR LEGAL AFFAIRS, JOSEPH D'AGOSTA, ROHAN JAMES, PAUL K. FULLER, APRIL GRAY-HUERTAS, SANDRA KREVAT, NEW YORK CITY ("NYC")DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT ("HPD"), NYC CORPORATION COUNSEL, ROBERT K. DAVIS, JOSEPH FIOCCA, IRA BOURSTEIN, LAMONT HEADLEY, SARALEE E. EVANS OF HPD, KIM LEVITON,WEST SIDE SRO LAW ROJECT("WESTSIDE"), SARALEE E. EVANS OF WESTSIDE,1133 BUILDING CORP., ROBERT A. DURST, BRICK MANAGEMENT CORP., SHAN COVEY, EASTERN PORK PRODUCTS, ROSENBERG & ESTIS, P.C., GARY ROSENBERG, NICHOLAS KAMILLATOS, FRANKLIN R. KAIMAN, FREDERICK PARK, DURST ORGANIZATION, ONE BRYANT PARK DEVELOMENT PARTNERS, LLC, ONE BRYANT PARK, LLC, DOUGLAS D. DURST, DENNIS HELLMAN, SARALEE E. EVANS, *Respondents.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE NEW YORK STATE COURT OF APPEALS

PETITION FOR A WRIT OF CERTIORARI

Susan Baba, Petitioner, *Pro Se*
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QUESTION PRESENTED

Petitioner requests that this Court grant *certiorari,* void all the orders and judgments *ab initio* below, and remand the case with directions to the original court below in the clear absence of all jurisdiction over 1133 Building Corp.

LIST OF PARTIES

All parties appear in the caption of the cause on the cover page and are represented by the followings:

1. **Hon. Andrew M. Cuomo, NYS Attorney General ("AG") by Carol Fischer, Ass't Solicitor General:** 120 Broadway, New York, NY 10271 (212) 416-8014 for Martin Evans, AG and NYS Insurance Department ("State Respondents")

2. **Hon. Michael A. Cardozo, NYC Corporation Counsel ("CC") by Mary O'Sullivan, Ass't CC:** 100 Church St., New York, NY 10007 (212) 788-1003 for NYC HPD, Robert K. Davis, Joseph Fiocca, Ira Bourstein, Lamont Headley, Kim Leviton and Saralee E. Evans of HPD ("City Respondents")

3. **David Cabrera, Esq. Of NYS DHCR Legal Affairs:** 25 Beaver St., New York, NY 10004 (212) 480-6440 for DHCR, Legal Affairs, Joseph D'Agosta, Rohan James, Paul K. Fuller, April Ray-Huertas and Sandra Krevat ("DHCR Respondents")

4. **Martha W. Weithman, Esq. of West Side SRO Law Project ("Westside"):** 647 Columbus Ave., New York, NY 10025 (212) 799-9638 for Westside and Saralee E. Evans of Westside ("Westside Respondents")

5. **Nicholas Kamillatos, Esq. ("Kamillatos") of Rosenberg & Estis, P.C. ("R&E"):** 733 Third Ave., New York, NY 10017 (212) 867-6000 for 1133 Building Corp., Robert A. Durst, Brick Management Corp., Shan Covey, Eastern Pork Products, R&E, Gary Rosenberg, Kamillatos, Franklin R. Kaiman, Frederick Park, Durst Organization, One Bryant Park Development Partners, LLC, One Bryant Park, LLC, Douglas D. Durst and Dennis Hellman (Durst Respondents")

6. **Sarelee E. Evans, Esq., *Pro Se*:** % NYS Supreme Court, 71 Thomas St., New York, NY 10013 (212) 815-0845

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OPINION BELOW

The opinion of the New York State ("NYS") Court of Appeals ("Ct.App.") is published at 10 NY3d 737 on 02/12/08; **[See, APPENDIX A-1]** at 9 NY3d 970 on 11/15/07; **[See, APPENDIX A-2]** at 8 NY3d 912 on 03/29/07 **[See, APPENDIX A-3] and** at 8 NY3d 839 on 01/16/07 **[See, APPENDIX A-4 and A-5** *(Amicus curiae)*] respectively.

The opinion of the NYS Supreme Court, Appellate Division, First Department ("AD") is not published as to the followings: Order dated 7/19/07; **[See, APPENDIX B-1]** Order dated 9/14/06; **[See, APPENDIX B-2]** Order dated 4/27/06; **[See, APPENDIXB-3]** Order dated 11/22/05; **[See, APPENDIX B-4]** Order dated 9/01/05 **[See, APPENDIX B-5]** respectively.

The opinion of the NYS Supreme Court, County of New York ("Sup.Ct.") is unpublished as to the followings: Order dated 5/24/04 & filed 6/29/04 **[See, APPENDIX C-1]** and said order basing the order of Justice Stephen G. Crane ("Crane") dated 03/12/98 & filed 03/17/98 *in re Baba v. New York University College of Dentistry ("NYU") and NYC HRA Commissioner's Office of Medical Assistance Program ("HRA"), et al.*, NY County Clerk Index No. 405973/96. **[See, APPENDIX C-2]**

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JURISDICTION

Sup.Ct had jurisdiction over Petitioner's application for a judgment pursuant to Article 78 of the

Civil Practice Law and Rules and AD and CT.App had jurisdiction for review upon appeal. The date on which Ct.App. dismissed Petitioner's motion on **November 15, 2007, [*See*, APPENDIX A-2]** which was made after AD denied her motion for entering a final determination for leave to appeal to the Court of Appeals. **[*See*, APPENDIX B-1]** A timely petition for rehearing was denied on **February 12, 2008. [*See*, APPENDIX A-1]** The jurisdiction of this Court is invoked under 28 U.S.C. 1257(a).

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. **THE FIRST AMENDMENT**: . . . Right to petition to the government redress of grievances.

2. **THE FIFTH AMENDMENT: . . .** Right to due process for a fair adjudication. "No person shall . . . be deprived of life, liberty, or property, without due process of law . . . "

3. **THE FOURTEENTH AMENDMENT**: . . . Right to due process and equal protection of the laws.

4. **U.S. CONSTITUTION: ARTICLE 4 SECTION 2**: . . . Right to access to the court.

5. **Federal Rule of Civil Procedure ("FRCP") 60(b)(4)**: On motion and upon such terms as are just, the court may relieve a party or a

party's legal representatives from a final judgment, order, or proceeding for the following reasons: . . . **(4) the judgment is void.**

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STATEMENT OF CASE

Commissioner Robert K. Davis of New York City ("NYC") Department of Housing Preservation and Development ("HPD") issued a Certificate of No Harassment ("Certificate") to 459 West 43rd Street Corp. ("459") on 3/29/90 and 6/18/93 respectively. Certificate is a prerequisite to initiate NYS Division of Housing and Community Renewal ("DHCR") proceeding for an order granting to terminate the subject Hotel Diplomat ("Diplomat") SRO Rent Stabilized Tenancies pursuant to RSL §26-511 (c)(9)(a) and RSC §2524.5(a)(2) ("Application"). **[See, APPENDIX F-1 & F-2]** HPD has never issued Certificate to 1133 Building Corp. ("1133"); thus, DHCR and Courts lacked all jurisdiction upon 1133. Thus, Petitioner is entitled to relief from an order and/or judgment pursuant to **Rule 5015(a)(4)** in the court below and in this Court pursuant to **FRCP 60(b)(4)**; a void judgment unconditionally in any courts at any time; thus, Petitioner does not require a final determination of the proceeding within the meaning of Constitution in this case.

A. Background:

1. In 1989 Ct. App. decided that New York City's Moratorium was unconstitutional *in re Seawall, 459, Eastern Pork Products ("EPP"), Durst Partners, et al.*

v. City of New York, et al." [See, 74 N.Y.2d 92; 542 N.E.2d 1059; 544 N.Y.S.2d 542.] [1]

2. Accordingly, 459, the owners of Diplomat by Respondent Robert Durst ("Durst") filed Application with DHCR. **[See, APPENDIX F-1 & F-2]**

3. Petitioner Susan Baba was a Rent Regulated permanent tenant at Diplomat since 1981. Diplomat was a Rent Stabilized Single Room Occupancy ("SRO") hotel at 108 West 43rd Street, New York, New York, ("Premises") and the rent was paid to Brick Management Corp. for $346.00 @ month since 1981.

4. On 12/17/87 a Diplomat employee Lillian Cuevas de Burgos ("Cuevas") attacked Petitioner physically with intent to injure and kill Petitioner in the Diplomat lobby and with intent to make me vacate the premises, which violated Penal Law: Article 241; Harassment of Rent Regulated Tenants, a class E felony ("PL: Art.241"). Petitioner took the Civil matter to NYC Civil Court Small Claims Part and judicially established

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[1] **David Saxe, J.S.C.** who entered a decision on or about March 16, 1988, [See, Seawall at 534 N.Y.S. 2d 958, 968, (A.D. 1st Dept.)] could be disqualified because of his marriage to Phyllis Krulik Saxe, Esq. on 12/12/87, who became an assistant CC in 1988, who represented the City of New York and Saralee E. Evans of West Side SRO Law Project attorney and Norman Siegel, Esq. of NYCLU intervened to protect SRO stocks could be disqualified since they worked together since 1974 for the impeachment of the former Richard Nixon and have been living together for a long time like a married couple. Thus, upon such conflict of interest at Seawall, the order of the Ct.App. was made.

the ***prima facie* evidence** of physical harassment and her wages for $300.00 @ day (currently $500. - $800.00) as a Japanese interpreter by winning her lost wages in re *Baba v. Durst, Diplomat, Brick Management Corp. ("Brick")*, Index No. 5370/88. **[See, APPENDIX D-1 & D-2: Orders of NYC Civil Court Small Claims Part & Appellate Term, First Department**. (County Clerk's No. 92890/1989)]

6. Saralee E. Evans ("Saralee") of West Side SRO Law Project ("Westside") was the attorney for all Diplomat tenants. Mayor Edward I. Koch said that: "NYC will provide free legal services to any tenant of SRO housing who is facing improper eviction, or is being harassed by a landlord." (by Dennis Hevesi, New York Times, 7/08/89) However, Saralee refused to give an advice for the Criminal matter, since she was involved with Cuevas' physical attack.

7. On 3/29/90 HPD Davis issued Certificate to 459. Saralee conspired and colluded with Kim Leviton of HPD herein and filed a false report that there was no harassment to Kim Leviton. Certificate is a prerequisite to initiate DHCR proceeding for 459 for Application.

8. On 6/12/91 at DHCR Office Administrative Law Judge Paul K. Fuller ("ALJ") initiated the proceeding for 1133, which never filed Application with DHCR.

9. On said day Saralee hysterically refused to represent Petitioner, forced to hire an attorney with in 2 (two) days and gave no record of prior proceedings for purposes of cover-up and concealment of ***prima facie* evidence** of physical harassment in violation of PL: ART.

241, her misconduct, lack of jurisdiction over 1133, *inter alia* and Durst, Gary Rosenberg and Nicholas Kamillatos therein, who refused to give the papers to Petitioner and submitted them to ALJ and Saralee only; thus, Petitioner had to investigate all the matters by herself.

10. DHCR granted Application to**1133;** however, **11333** had no lease (nor permanent hotel tenancy) with Petitioner and was not the registered owner and had no authorization from **459** to evict her by **1133** from Diplomat and from the relocation accommodation Hotel Rosoff's ("Rosoff's"), currently known as Hotel Casablanca owned by EPP. **1133** was not an authorized party and **459** did not appear nor was it named their decision caused her to be evicted. Thus, DHCR lacked all jurisdiction over **1133;** thus, DHCR orders dated **9/17/92 and 10/01/92** are null and void *ab initio* in all respects.

11. On 11/16/92 Petitioner timely commenced an Article 78 actions at the proper jurisdiction at Sup.Ct., 60 Centre Street, New York, New York *in re Baba v. DHCR, HPD, 1133, Saralee, et al.;* NY County Clerk Index No. 31263/92.

12. Justice Martin Evans, J.S.C. ("Evans") failed to declare DHCR orders null and void *ab initio* in the clear absence of all jurisdiction over **1133** and failed to rescind 3/29/90 Certificate issued by HPD Davis.

13. Justice Evans granted the untimely action, which violated Durst's sworn statement commenced by 1133 to terminate the essential hotel services in

Re 1133 v. DHCR, Baba, et al.;NY County Clerk Index No.31518/92 to make Petitioner to vacate the premises.

14. Justice Evans granted the untimely action commenced by 1133 and evicted Petitioner from Diplomat owned by 459 on 3/17/93 and Rosoff's owned by EPP on 6/2/93 upon lack of all jurisdiction over 1133 *in re 1133 v. Baba,* NY County Clerk Index No. 35980/92.

15. On or about 1/21/94 Beatrice Shanswit, J.S.C. failed to declare DHCR orders and Justice Evans orders null and void *ab initio* in the clear absence of all jurisdiction over **1133** and failed to rescind 6/18/93 Certificate issued by HPD Davis *in re Baba v. Evans, DHCR, HPD, 1133, Saralee, Westside, et al.;* NY County Clerk Index No. 125921/93.

B. The Proceeding Below:

1. On or about 2/15/2000 Yevette Shiffman, Director of Policy and Program Administration of HPD Commissioner Richard T. Roberts' Office revealed **a *prima facie* evidence** and confirmed with Petitioner that HPD granted Certificate to **459 [See, APPENDIX E]** by HPD Davis in **3/29/90 and 6/18/93**[2] respectively.

2. Thus, on or about April 9, 2004, pursuant to CPLR 205(a) and CPLR 602, [which thus is not *res*

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[2] **3/29/90 Certificate** must void by Saralee's false filing of harassment with HPD and **6/18/93 Certificate** must void due to her disqualification by dual role as Westside attorney and HPD officer. [*See, People v. Shinkle,* 415 N.E.2d 909 (N.Y. 1980). ("Shinkle")

judicata] Petitioner commenced this Article 78 Action entitled *Baba v. Evans, DHCR, HPD, et al.;* NY County Clerk Index No.105617/04 at Sup.Ct. to declare HPD Certificates, DHCR orders and all the court orders null and void *ab initio* in the clear absence of all jurisdiction over 1133.

3. The original court, Justice Lottie E. Wilkins ("Wilkins") dismissed the petition **without a hearing** on or about **May 24, 2004 and filed June 29, 2004.**

4. AD dismissed the appeal (M-3182 & M-4031) on or about **September 1, 2005 [See, APPENDIX B-5] without a hearing** and denied a final determination for leave to appeal to Ct.App. on or about **July 19, 2007. [See, APPENDIX B-1]**

5. This petition was taken from an order of Ct. App. denying the **rehearing** of the motion for leave to appeal to the Court of Appeals dated **February 12, 2008** timely within 90 days after the entry of the order. **[See, APPENDIX A-1]**

C. Statement of Facts:

1. Physical harassment committed by the Diplomat employee Cuevas. **[See, APPENDIX D-1 & D-2]**

2. HPD Commissioner Davis issued Certificate to **459** only on 3/29/90 and 6/18/93. **[See, APPENDIX E]**

3. HPD Commissioner **never** issued Certificate to 1133 to initiate DHCR proceeding. **[See, APPENDIX E]**

4. Thus, (a) **State Respondents** represented by Carol Fischer, Assistant Solicitor General of AG; (b) **City Respondents** represented by Mary O'Sullivan, Assistant Corporation Counsel of CC; (3) **DHCR Respondents** represented by David Cabrera, Esq. of DHCR Legal Affairs; (d) **Westside Respondents** represented by Martha W. Weithman, Esq. of Westside; (e) **Durst Respondents** represented by Respondent Nicholas Kamillatos, Esq. of R&E; (f) **Respondent Saralee E. Evans, *Pro se*** failed to submit Certificate issued to **1133.**

5. (a) **State Respondents;** (b) **City Respondents** (c) **DHCR Respondents**; (d) **Westside Respondents**; (e) **Durst Respondents** failed to cure the **Corporate Verification** and (f) **Respondent Saralee E. Evans, *Pro se*** failed to answer to Petitioner's papers from the start in the original court; thus, **all said parties were in default.**

REASONS FOR GRANTING THE WRIT

I

IN THE CLEAR ABSENCE OF ALL JURISDICTION OVER 1133 THE OPINION BELOW CONFLICTS WITH CPLR 5015; THE MAIN PROVISION FOR A VACATUR OF ORDERS/JUDGMENTS.

1. DHCR and the courts below lacked all jurisdiction over 1133; thus, **CPLR 5015(a)(4)** applies, which provides a void judgment; **void any order or Judgment at any time in any court unconditionally** and **CPLR 5015(d) enforces the restitution**. Thus, all the prior orders and judgments below must be void *ab initio*.

2. **David D. Siegel** emphasizes in his New York Practice that: "If a court lacks subject matter jurisdiction, **its judgment is void**... the judgment would be of no effect."

3. **West's NY Digest 4th** also emphasizes that: "... a judgment or order on the ground that the court lacked jurisdiction ... **unconditionally vacated."**

4. **CPLR 5015** is the approximate counterpart of **FRCP 60(b)** and the main provision is for a vacatur of orders and judgments and **CPLR 5015(a)(4)** provides **void any order or Judgment at any time in any court unconditionally.**

5. **The standard of review of the denial of FRCP 60(b) is abuse of discretion.** *Browder v. Director, Dep't of Correction of Illinois,* 434 U.S. 257, 263 n.7 (1978), 98 S.Ct. at 560, n.7.

6. **"Abuse of Discretion" exists when [District] Court has made error of law or of fact.** *Ferris v. Cuevas,* 118 F.3d 122 (2nd Cir. 1997); *Reuters Ltd. v. United Press Int'l, Inc.,* 903 F.2d 904, 907 (2nd Cir. 1990).

7. Thus, the courts below erred and abused their discretion and failed to declare DHCR orders and the prior orders/judgment null and void *ab initio* in the clear absence of all jurisdiction over 1133.

II

IN THE CLEAR ABSENCE OF ALL JURISDICTION OVER

1133, THE OPINION BELOW CONFLICTS WITH RULE 60(b); THE MAIN PROVISION FOR A VACATUR OF ORDERS/JUDGMENTS.

1. DHCR and the courts below lacked all jurisdiction over 1133; thus, **Rule 60(b)(4)** applies, which provides a void judgment; **void any order or Judgment at any time in any court unconditionally**. Thus, all the prior orders and judgments below must be void *ab initio*.

2. In the clear absence of all jurisdiction, **Court has no discretion to make any order or judgment.** When a judge acts, **the proceeding is *coram non judice.*** [*See*, ***Manning v. Ketcham***, 58 F.2d 948, 949, 6th cir. 1932)] **In such a case the judge has lost his (her) judicial function, has become a mere private person, and is liable as a trespasser for the damages resulting from his (her) unauthorized acts.** Such has been the law from the days of the case of *The Marshalsea*, 10 Coke 68. It was recognized as such in ***Bradley v. Fisher***, 13 Wall. (80 U.S.) 335, 351, 20 L. Ed. 646. ***In State ex rel. Egan v. Wolever***, 127 Ind. 306, 26 N.E. 762, 763, the court said: **"Where there is no jurisdiction at all, there is no judge; the proceeding is as nothing."**

3. **FRCP 60(b)** is the approximate counterpart of **CPLR 5015** and the main provision is for a vacatur of orders and judgments and **Rule 60(b)(4)** provides **void any order or Judgment at any time in any court unconditionally.**

4. **The standard of review of the denial of FRCP**

60(b) is abuse of discretion. *Browder v. Director, Dep't of Correction of Illinois,* 434 U.S. 257, 263 n.7 (1978), 98 S.Ct. at 560, n.7.

6. **"Abuse of Discretion" exists when [District] Court has made error of law or of fact.** *Ferris v. Cuevas,* 118 F.3d 122 (2nd Cir. 1997); *Reuters Ltd. v. United Press Int'l, Inc.,* 903 F.2d 904, 907 (2nd Cir. 1990).

7. Thus, the courts below erred and abused their discretion and failed to declare DHCR orders and the prior orders/judgment null and void *ab initio* in the clear absence of all jurisdiction over 1133. The courts below had no discretion to make any order or judgment.

III

IN THE CLEAR ABSENCE OF ALL JURISDICTION OVER 1133, COURTS BELOW ERRED AND ABUSED THEIR DISCRETION AND CONFLICTS WITH THIS COURT'S RULINGS ON THE ESSENTIAL DUE PROCESS RIGHT OF PETITIONER.

1. Ct.App. below dismissed Petitioner's appeal *sua sponte* on the ground that: "The order sought to be appealed from does not finally determine the proceeding within the meaning of the Constitution", which however does not apply to this case in the clear absence of all jurisdiction over 1133.

2. **CPLR 5015** is the approximate counterpart of **FRCP 60(b)** and the main provision is for a vacatur of orders and judgments and **CPLR 5015(a)(4)** provides

void any order or Judgment at any time in any court unconditionally. Thus, the order sought to be appealed from does not require the final determination of the proceeding within the meaning of the Constitution.

3. Thus, Ct.App. failed to declare prior DHCR and courts orders null and void *ab initio*, violated Petitioner's due process right not to give an fair opportunity to be heard, erred, abused the discretion, covered up and concealed the ***prima facie* evidence** that Ct.App. lacked jurisdiction over 1133.

4. Thus, Petitioner's constitutional right to access to the courts was violated. **First Amendment** provides the right to petition to the government redress of grievances, [*See*, ***Kittay v. Giuliani,*** 112 F. Supp.2d 342, 354, *see also*, ***McDonald v. Smith,*** (1985) 472 U.S. 479, 482, 105S. Ct. 2787, 86 L. Ed. 384]

5. In case held by the Supreme Court of the United States, the High Court stated that: "... Insofar as right of access to the courts vindicated by Bounds is concerned, meaning access to the courts is the touchstone ...." [*See*, ***Lewis v. Casey,*** **(1996) 518 U.S. 343, 116 S.Ct. 2174]**

6. AD dismissed the appeal (M-3182 & M-4031) on or about **September 1, 2005 [See, APPENDIX B-5] without a hearing** in violation of due process and equal protection of laws and denied a final determination for leave to appeal to Ct.App. on or about **July 19, 2007,**

[*See*, APPENDIX B-1] in the clear absence of all jurisdiction over 1133.

7. AD Justices below enjoined Baba without hearing, notice, and opportunity to be heard; thus, the AD orders were **entered in violation of due process of 5th and 14th Amendments. [*See, Lau v. Meddaugh*,** 229 F.3d 121 (2nd Cir. 2000) (the order vacated and remanded that Plaintiff was entitled to notice), ***see also, Schlesinger Inv. Partnership v. Fluor Corp***, 671 F.2d 739, 742 (2nd Cir.1982) (reversing *sua sponte* dismissal entered without prior notice) and ***Weitman v. Stein***, 897 F.2d 653, 658 (2nd Cir.1990) (the *sua sponte* order was entered in violation of due process.)

8. Justice Wilkins erred and abused her discretion and dismissed the petition in the clear absence of all jurisdiction over 1133 **without a hearing** on or about **May 24, 2004 and filed June 29, 2004.** She had no discretion upon lack of jurisdiction.

9. Justice Wilkins based Justice Crane's order *in re Baba v. NYU, et al.* filed 3/17/98 [*See*, **APPENDIX C-1]** in violation of due process and equal protection of laws. Justice Crane also made said order without a hearing after Justice Stanley Sklar recused himself pursuant to *People v. Muka*. Justice Wilkins' order is void because her law Secretary represented HRA in said NYU case; thus, he is disqualified. [*See, supra, Id.;* Shinkel in the foot note 2.]

10. Justice Wilkins [and Justice Crane] failed to

provide an attorney to protect *pro se* right. **[See, *In re Estate of Rappaport*,** Surrogate, 440 N.Y.S. 2d 532.]

11. The other justice stated in Justice Wilkins' Order who precluded Petitioner to file further motions was Karla Maskowitz, J.S.C. *in re Baba v. Gi Ung Kim ("Kim")*, who recused herself; thus, her order was not be enforceable, and Petitioner's attorney in said case disappeared and Dr. Kim's attorney Thomas Hoffman was disqualified in the District Attorney's Office in New York County. Pursuant to Franklin R. Kaiman, Esq. who has been asking Saralee, who became a judge with Judge Marilyn Shafer, the former NYC Civil Court Judge as her co-candidate of NYC Civil Court Judge, to make all the orders against Petitioner in each and every court and he stated in his Affirmation dated July 22, 2003 *in re Baba v. Hotel Thirty Thirty, et al.* that "This Court need only ask Judge Evans who has been sued by Plaintiff in one of her many actions." Justice Wilkins' courtroom is next to Saralee of NYC Civil Court Judge at 71 Thomas Street, New York, New York, 10013 and he became a In-House Counsel of Hotel Thirty Thirty since 1999, and Petitioner had to slip back to the time of lawless society like in the Middle Ages. Petitioner is so surprised that she is still alive.

12. Justice Wilkins below entered a final order **[See, APPENDIX C-1]** without hearing, notice and opportunity to be heard; thus, the order was **entered in violation of due process of 5th and 14th Amendments. [See, *Lau v. Meddaugh*,** 229 F.3d 121 (2nd Cir. 2000) (the order vacated and remanded that Plaintiff was entitled to notice), **see also, *Schlesinger Inv. Partnership v. Fluor***

Corp. 671 F.2d 739, 742 (2nd Cir.1982) (reversing *sua sponte* dismissal entered without prior notice) and ***Weitman v. Stein***, 897 F.2d 653, 658 (2nd Cir.1990) (the *sua sponte* order was entered in violation of due process).

13. Thus, Sup.Ct., AD and Ct.App. below violated **United States Constitution: Article IV Section 2 Clause,** which provides the right to access to the courts. **[See, Kittay v. Giuliani, 112 F. Supp.2d 342, 354]** Thus, Baba's constitutional right to access to the courts was violated.

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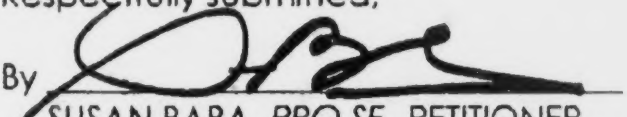
CONCLUSION

BASED ON THE FOREGOING, THIS COURT MUST GRANT CERTIORARI, VOID ALL THE PRIOR ORDERS AND JUDGEMENTS *AB INITIO* BELOW, AND REMAND THE CASE WITH DIRECTIONS TO THE ORIGINAL COURT BELOW.

Respectfully submitted,

By 

SUSAN BABA, *PRO SE* PETITIONER
P.O. BOX 1280
NEW YORK, NY 10159
(212) 532-8815

Dated: New York, New York
November 21, 2008
[Corrected Petition of May 12, 2008]

APPENDIX A

State of New York Court of Appeals

In the Matter of Susan Baba, Appellant
v.
Martin Evans, New York State Division of Housing and Community Renewal, et al., Respondents.

[APPENDIX A-1]

Mo. No. 3: Decided: Feb. 12, 2008
Slip Opinion No. 2008: NY SlipOp 63281

Motion for reargument of motion for leave to appeal is denied. [See, 10 NY3d 737 (2008)]

[APPENDIX A-2]

Mo. No. 1082: Decided: Nov. 15, 2007
Slip Opinion No. 2007: NY SlipOp 83543

Motion for leave to appeal dismissed upon the ground that the order sought to b e appealed from does not finally determine the proceeding within the meaning of the Constitution. [See, 9 NY3d 970 (2007)]

[APPENDIX A-3]

Mo. No. 217: Decided: March 29, 2007
Slip Opinion No. 2007: NY SlipOp 66200

Motion for reconsideration of this court's January 16, 2007 dismissal order denied. [See, 8 NY3d 912 (2007)]

[APPENDIX A-4]

Mo. No. 102 SSD 4: Decided: Jan. 16, 2007
Slip Opinion No. 2007: NY SlipOp 60863

Appeal dismissed without costs, by the court *sua sponte*, upon the ground that the order appealed from does not finally determine the proceeding within the meaning of the Constitution. [*See*, 8 NY3d 839(2007)]

[APPENDIX A-5]

Mo. No. 68 Jan. 16, 2007
Slip Opinion No. 2007: NY SlipOp 60862

Motion by Gilbert Lau for leave to file a brief *amicus curiae* on the appeal herein denied. Motion for poor person relief dismissed as academic. [*See*, 8 NY3d 839 (2007)]

APPENDIX B

New York State Appellate Division First Dep't

In the Matter of Susan Baba, Petitioner-Appellant,
For a Judgment Pursuant to Article 78 of the CPLR

-against-

Martin Evans, New York State Division of Housing and Community Renewal, et al., Respondents.

[APPENDIX B-1]

M-3083: Index No.105617/04: Dated: July 19, 2007

Present: Hon Peter Tom (Presiding Justice), Angela M. Mazzarelli, David B. Saxe, David Friedman, John T. Buckley, Justices.

An order of this Court having been entered on September 1, 2005 (M-3182 & M4031) dismissing petitioner's appeal taken from the judgment of the Supreme Court, New York County, entered on or about June 29, 2004,

And an order of this Court having been entered on November 22, 2005 (M-6006) denying petitioner's motion to vacate the aforesaid order of this Court dismissing her appeal,

And an order of this Court having been entered on September 14, 2006 (M-3306) denying petitioner's motion for leave to appeal to the Court of Appeals,

And petitioner having moved for an order "entering a final determination to appeal to the Court of Appeals;" for a default judgment against all respondents, and to declare "all prior orders and judgments null and void *ab initio*, "

Now, upon reading and filing the papers with respect to the motion, and due deliberation, having been had thereon, it is

Ordered that the motion is denied. The attention of the parties is directed to 22 NYCRR 130-1.1 et seq. with respect to future filings in this proceeding.

Enter: /s/David Spokony, Deputy Clerk

[APPENDIX B-2]

M-3306: Index No.105617/04: Dated: Sept.14, 2007

Present: Hon John T. Buckley (Presiding Justice), Peter Tom, Angela M. Mazzarelli, David B. Saxe, David Friedman, Justices.

An appeal having been taken from the judgment of the Supreme Court, New York County, entered on or about June 29, 2004,

And an order of this Court having been entered on September 1, 2005 (M-3182 & M4031) dismissing said appeal,

And an order of this Court having been entered on April 27, 2006 (M-1803) denying vacatur of the aforesaid order,

And petitioner having moved for leave to appeal to the Court of Appeals,

Now, upon reading and filing the papers with respect to the motion, and due deliberation, having been had thereon,

It is ordered that the motion is denied.

Enter: /s/David Spokony, Deputy Clerk

[APPENDIX B-3]

M-1803: Index No.105617/04: Dated: April 14, 2006

Present: Hon John T. Buckley (Presiding Justice), Peter Tom, Angela M. Mazzarelli, David B. Saxe, David Friedman, Justices.

An appeal having been taken from the judgment of the Supreme Court, New York County, entered on or about June 29, 2004,

And an order of this Court having been entered on September 1, 2005 (M-3182 & M-4031) dismissing said appeal,

And an order of this Court having been entered on April 27, 2006 (M-1803) denying vacatur of the aforesaid order,

And petitioner having moved for an order vacating the aforesaid prior order of this Court, and other relief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation, having been had thereon,

It is ordered that the motion is denied.

Enter: /s/David Spokony, Deputy Clerk

[APPENDIX B-4]

Present: Hon John T. Buckley (Presiding Justice), Peter Tom, Angela M. Mazzarelli, David B. Saxe, David Friedman, Justices.

M-6006: Index No.105617/04: Dated: Nov. 22, 2005

An appeal having been taken from the judgment of the Supreme Court, New York County, entered on or about June 29, 2004,

And an order of this Court having been entered on September 1, 2005 (M-3182 & M-4031) dismissing said appeal,

And an order of this Court having been entered on April 27, 2006 (M-1803) denying vacatur of the aforesaid order,

And petitioner having moved for an order vacating the aforesaid order of dismissal of this Court,

Now, upon reading and filing the papers with respect to the motion, and due deliberation, having been had thereon, it is

Ordered that the motion is denied.

Enter: /s/Catherine O'Hagan Wolfe, Clerk

[APPENDIX B-5]

Present: Hon John T. Buckley (Presiding Justice), Peter Tom, Angela M. Mazzarelli, David B. Saxe, David Friedman, Justices.

M-3182 & 4031:Index No.105617/04: Dated: Sept. 1, 2005

Respondents having moved to dismiss the appeal taken from the judgment of the Supreme Court, New York County, entered on or about June 29, 2004, and for other relief (M-3182),

And an order of this Court having been entered on September 1, 2005 (M-3182 & M-4031) dismissing said appeal,

And petitioner having cross-moved for leave to file a supplemental record on the appeal (M-4031),

Now, upon reading and filing the papers with respect to the motion, and due deliberation, having been had thereon, it is

Ordered that the motion is granted and the appeal is dismissed. The Cross motion is denied as moot.

Enter: /s/Catherine O'Hagan Wolfe, Clerk

APPENDIX C

Susan Baba, Petitioner v.
Martin Evans, et al., Respondents.

[APPENDIX C-1]

Present: Lottie E. Wilkins, Justice, Part 18

Motion Seq. No. 001: Index No.105617/04
Order Dated: May 24, 2004 and Filed: June 29, 2004

Upon the foregoing papers, it is ordered that this motion, Petitioner has commenced this proceeding, bearing a 2004 index number, to annul determinations by respondent, DHCR, and to declare prior court orders "null and void." The relief sought herein is the same as that sought in two earlier proceedings, bearing index numbers 031263/92 and 125921/93, which were ultimately dismissed. At around the same time this proceeding ws submitted to the Motion Submissions Part, petitioner made a request directly to this part to stay consideration of this matter until petitioner could find a lawyer to represent her, which she conceded was required.

Because petitioner commenced this proceeding without first obtaining a lawyer, she has run afoul of a prior "administrative" order. In that order, which apparently has not been modified or vacated, another Justice held that petitioner "is enjoined from commencing without prior approval of this court, any actions or proceedings in this court unless she is represented by an attorney duly admitted and licensed to practice law in the State of New York" (Baba v New York Univ., Sup Ct, NNY County, March12, 1998, Crane, J. Index No. 405973/96). From this language, it is clear that if petitioner wishes to commence a proceeding without representation by a

licensed attorney, she must first obtain court approval. There is no indication that such prior approval was obtained before commencing this proceeding, The request to stay consideration is therefore irrelevant. Accordingly, it is

ORDERED that the petition is denied and the proceeding dismissed, without prejudice.

This constitutes the decision and judgment of the Court.

FINAL DISPOSITON /s/ Lottie E. Wilkins

[APPENDIX C-2]

Present: Stephen G. Crane, Justice, Part 56

Motion Seq. No. 010: Index No. 405973/96
Order Dated: March 12, 1998 and Filed: March 17, 1998

Upon the foregoing papers, ti is ordered that this motion by plaintiff to void, to stay and/or other relief" in which she seeks to void or stay defendant NYU's demand for discovery and inspection and from proceeding any further in this action until after the hearing and determination of prior motion and appeals is denied. NYU's cross motion for costs and sanctions is granted. Baba's motion is frivolous. Justice Sklar long ago denied Baba's motion for default judgment and inquest against NYU; this is the second motion she has brought to stay NYU from proceeding with its discovery requests. Baba's conduct in continuing to make

motions for the same relief continuously denied by this court is frivolous and warrants an award to NYU of costs and sanctions to alleviate the costs incurred in having to oppose Baba's motion. Therefore, Baba is directed to pay the sum of $500 to defendant's counsel within 21 days after service of a copy of this order with notice of entry.

This is one of approximately 20 actions that Susan Baba has commenced in this court suing numerous parties for various relief,. Many of these actions have been bogged down by frivolous motion practice and an liability of the plaintiff to accept the rulings of this court. At least two judges have recused themselves from Ms. Baba's actions based upon the accusations she makes against them if a motion is declared against her. The right to represent oneself in both civil and criminal matters is basic to our system of justice (Muka v. New York State Bar Assn, 120 Misc 2d 897, 903 (Sup Ct Tompkins 120 Cty 1983]; NY Const, art 1756]. However, the right to appear pro se is not limited (Muka, supra, People v. Dunlap, 623 P.2d 408, 410 (Sup Ct Colo. 1981)]. All litigants have a right to impartial and considered justice. Insofar as any litigant unnecessarily consumes inordinate amounts of judicial time and energy, he or she deprives other litigants of their proper share of these resources. A balance must be kept. (Muka, supra, 120 Misc 2d at 903]. Therefore, upon the court's own motion, Susan Baba is enjoined from making any further motions in this action without prior court approval. Furthermore, Susan Baba is enjoined from commencing, without prior approval of this court, any actions of proceedings in this court

unless she is represented by an attorney at law duly admitted and licensed to practice law in the State of New York (Id. at 94-906; Martin-Trigona v. Capital Cities/ABC, 145 Misc 2d 405 [Sup Ct NY Cty 1989]] (see also Sassower v Signorelli, 99 AD2d 358 [2d Dept 1984]).

Accordingly, it is

ORDERED that the plaintiff's motion to "Void, To stay and/or Other Relief" is denied; and it is further

ORDERED that the cross motion is granted and Baba is directed to pay the sum of $500 to defendant's counsel within 21 days after service of a copy of this order with notice of entry; and it is further

ORDERED that upon the court's motion, Susan Baba is enjoined from making any further motions in this action without prior court approval; and it is further

ORDERED that Susan Baba is enjoined from commencing, without prior court approved, any actions or proceedings in this court unless she is represented by an attorney at law duly admitted and licensed to practice law in the State of New York; and it is further

ORDERD that the parties shall appear in Part 56 at 10:00 a.m. on March 31, 1999 to schedule all remaining outstanding discovery.

This foregoing constitutes the decision and order of the court.

NON-FINAL DISPOSITON /s/Stephen G. Crane

APPENDIX D

Susan Baba, Plaintiff v. Robert A. durst, Brick Management Corp. Hotel Diplomat, Defendants.

[APPENDIX D-1]

Present: Stuart C. Cohen, Judge, Civil Court of The City of New York City: Small Claims Part

Index No.5379/88: Order Dated: 12/13/88

Judgment and award in favor of Claimant against Brick Management Corp. and Hotel Diplomat – for loss of wages after attack by employee of Defendants. Loss of $300.00. Award amount: $300.00, Interest: $27.00, Costs:5.25; Total Judgment: $332.25.

[APPENDIX D-2]

Present: Stuart S. Ostrau, P.J., Jawn A. Sandifer, William P. McCooe, Justices.

Index No. 5379/88: County Clerk's No. 92890/1989, Cal 89-221, December 1989 Term Order Filed: 1/23/90

An Appeal have been taken to this court by defendant from a judgment of the Small Claims Part of the Civil Court of the City of New York, County of New

York entered on the 13th day of December 1988 and the said appeal having been heard and due deliberation having been had thereon,

IT IS ORDERED AND ADJUDGED, that the judgment so appealed from be and the same is hereby affirmed without costs.

Enter:/s/Justice Appellate Term, Supreme Court First Dept.

APPENDIX E

City of New York
Department of Housing Preservation and Development
Richard T. Roberts, Commissioner
Office of Housing Intervention and Resources
Robin Weinstein, Acting Deputy Commissioner
February 15, 2000

Ms. Susan Baba
P.O. Box 473
New York, NY 10156

Dear Ms. Baba:

Your letter of January 3, 2000 to Commissioner Roberts has been forwarded to me for response.

As you are aware, HPD granted a Certificate of No Harassment to the owners of 459 West 43rd street in the early 1990's. At this time, there is no further role for HPD with regard to these premises.

Sincerely,

/s/Yvette Shiffman, Director
Policy and Program Administration

APPENDIX F

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza
92-31 Union Hall Street
Jamaica, NY 11433

[APPENDIX F –1]

Mailing Address of Tenant
Name: Susan Baba
108 West 43rd Street, Apt. No. 1006
New York, New York 10036

Mailing Address of Owner/Management Agent
459 West 43rd Street Corp.
c/o Rosenberg & Estis, P.C.
228 East 45th Street
New York, New York 10017
(212)867-6000

Address of Housing Accommodations: 108 West 43rd Street, New York, New York

The legally requested or maximum rent is:

$346.00 per month: Month to Month
Hotel Stabilized

The last lease in effect is for the term from:
Lease in effect

Names of all tenants and adult members of Household who may be evicted if application is granted:
Name: Susan Baba
Age (if known): unknown
Years in occupancy (if known): 8 years
Physical Impairment Preventing substantial Gainful Employment (if applicable):
Not Applicable

[APPENDIX F –2]

RIDER TO OWNER'S APPLICATION

The owner makes this application pursuant to Code Section 2524.5(a)(2). The owner seeks in good faith to recover possession of all of the housing accommodations in the building for the purpose of demolishing them and constructing a new building on the site. The owner intends to construct a new commercial retail building on the site, has begun preparing architectural plans to obtain all necessary approvals in order to do so and has the financial ability to demolish the existing building and construct a new building as planned.

After establishing to the satisfaction of the Division that the owner intends in good faith to recover possession of all the housing accommodations in order to demolish the building and construct a new building, the Division should issue an order permitting the owner to terminate the hotel tenancies of all the occupied housing accommodations, on such conditions permitted by the Rent Stabilized Law and code.

I hav e read the foregoing and hereby affirm that the contents are true of my own knowledge.
[Name and Title]: 459 West 43rd Street Corp./s/ by Robert Durst, Vice President: Dated: 1/30/90

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